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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

HENDRIK BLOCK,

Plaintiff,

vs.

GARDEN FRESH RESTAURANTS LLC dba
SWEET TOMATOES; JENNIE M. MARTIN,
Trustee of the JULIO A. MARTIN FAMILY
TRUST dated December 5, 2003;

Defendants.

) No.

) **COMPLAINT ASSERTING DENIAL OF**
) **RIGHT OF ACCESS UNDER THE**
) **AMERICANS WITH DISABILITIES ACT**
) **FOR INJUNCTIVE RELIEF, DAMAGES,**
) **ATTORNEYS' FEES AND COSTS (ADA)**

I. SUMMARY

1. This is a civil rights action by plaintiff HENDRIK BLOCK ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Sweet Tomatoes
7114 N. Fresno Street
Fresno, CA 93720
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against GARDEN FRESH RESTAURANTS LLC dba SWEET TOMATOES and JENNIE M. MARTIN, Trustee of the JULIO A. MARTIN FAMILY TRUST dated December

1 5, 2003 (hereinafter collectively referred to as “Defendants”), pursuant to Title III of the
2 Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related
3 California statutes.

4 **II. JURISDICTION**

5 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
6 claims.

7 4. Supplemental jurisdiction for claims brought under parallel California law –
8 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

9 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

10 **III. VENUE**

11 6. All actions complained of herein take place within the jurisdiction of the United
12 States District Court, Eastern District of California, and venue is invoked pursuant to 28 U.S.C.
13 § 1391(b), (c).

14 **IV. PARTIES**

15 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
16 persons), firm, and/or corporation.

17 8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair
18 or electric scooter for mobility. Consequently, Plaintiff is “physically disabled,” as defined by
19 all applicable California and United States laws, and a member of the public whose rights are
20 protected by these laws.

21 **V. FACTS**

22 9. The Facility is open to the public, intended for non-residential use, and its
23 operation affects commerce. The Facility is therefore a public accommodation as defined by
24 applicable state and federal laws.

25 10. Plaintiff lives within 25 miles of the Facility and visited the Facility on or about
26 December 16, 2019 and January 13, 2020 to have lunch. During his visits to the Facility,
27 Plaintiff encountered the following barriers (both physical and intangible) that interfered with,
28 if not outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges and

1 accommodations offered at the Facility:

- 2 a) The entry door to the Facility was heavy and difficult for Plaintiff to
3 open during both visits.
- 4 b) On both of his visits, the men's restroom door was heavy and closed
5 very quickly, slamming shut on Plaintiff as he tried to maneuver
6 through.
- 7 c) During both visits, the toilet stall door in the men's restroom was stuck
8 and hard for Plaintiff to open, and the lock was small and hard for him to
9 use.
- 10 d) During both visits, only booths were available when Plaintiff arrived,
11 but they did not provide sufficient knee and toe clearances for him to sit
12 at. He had to wait until a table was vacated so he could sit there.
- 13 e) During both visits, the soda machine controls and hot food were
14 positioned out of Plaintiff's reach and he had to ask for help to obtain a
15 soda.

16 11. The barriers identified in paragraph 10 herein are only those that Plaintiff
17 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist
18 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once
19 such additional barriers are identified as it is Plaintiff's intention to have all barriers which
20 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

21 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
22 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
23 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
24 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
25 once the barriers are removed.

26 13. Defendants knew, or should have known, that these elements and areas of the
27 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
28 the physically disabled. Moreover, Defendants have the financial resources to remove these

1 barriers from the Facility (without much difficulty or expense), and make the Facility
2 accessible to the physically disabled. To date, however, Defendants refuse to either remove
3 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

4 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
5 and authority to modify the Facility to remove impediments to wheelchair access and to
6 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
7 Accessible Design. Defendants have not removed such impediments and have not modified the
8 Facility to conform to accessibility standards. Defendants have intentionally maintained the
9 Facility in its current condition and have intentionally refrained from altering the Facility so
10 that it complies with the accessibility standards.

11 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
12 so obvious as to establish Defendants' discriminatory intent. On information and belief,
13 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
14 to relevant building standards; disregard for the building plans and permits issued for the
15 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
16 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
17 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
18 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
19 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

20 VI. FIRST CLAIM

21 Americans with Disabilities Act of 1990

22 Denial of "Full and Equal" Enjoyment and Use

23 16. Plaintiff re-pleads and incorporates by reference the allegations contained in
24 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

25 17. Title III of the ADA holds as a "general rule" that no individual shall be
26 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
27 goods, services, facilities, privileges, and accommodations offered by any person who owns,
28 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

1 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
2 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
3 Facility during each visit and each incident of deterrence.

4 Failure to Remove Architectural Barriers in an Existing Facility

5 19. The ADA specifically prohibits failing to remove architectural barriers, which
6 are structural in nature, in existing facilities where such removal is readily achievable. 42
7 U.S.C. § 12182(b)(2)(A)(iv).

8 20. When an entity can demonstrate that removal of a barrier is not readily
9 achievable, a failure to make goods, services, facilities, or accommodations available through
10 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
11 § 12182(b)(2)(A)(v).

12 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
13 barriers at the Facility without much difficulty or expense, and that Defendants violated the
14 ADA by failing to remove those barriers, when it was readily achievable to do so.

15 22. In the alternative, if it was not “readily achievable” for Defendants to remove
16 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
17 services available through alternative methods, which are readily achievable.

18 Failure to Design and Construct an Accessible Facility

19 23. Plaintiff alleges on information and belief that the Facility was designed and
20 constructed (or both) after January 26, 1993 – independently triggering access requirements
21 under Title III of the ADA.

22 24. The ADA also prohibits designing and constructing facilities for first occupancy
23 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
24 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

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25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 usable by persons with disabilities.

2 32. Such failure by Defendants to maintain the Facility in an accessible condition
3 was not an isolated or temporary interruption in service or access due to maintenance or
4 repairs.

5 33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney
6 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

7 **VII. SECOND CLAIM**

8 **Unruh Act**

9 34. Plaintiff re-pleads and incorporates by reference the allegations contained in
10 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

11 35. California Civil Code § 51 states, in part, that: All persons within the
12 jurisdiction of this state are entitled to the full and equal accommodations, advantages,
13 facilities, privileges, or services in all business establishments of every kind whatsoever.

14 36. California Civil Code § 51.5 also states, in part that: No business establishment
15 of any kind whatsoever shall discriminate against any person in this state because of the
16 disability of the person.

17 37. California Civil Code § 51(f) specifically incorporates (by reference) an
18 individual's rights under the ADA into the Unruh Act.

19 38. Defendants' aforementioned acts and omissions denied the physically disabled
20 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges
21 and services in a business establishment (because of their physical disability).

22 39. These acts and omissions (including the ones that violate the ADA) denied,
23 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

24 40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory
25 minimum damages of \$4,000 for each offense.

26 41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and
27 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code
28 § 52(a).

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VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Attorneys' fees, litigation expenses, and costs of suit.²
4. Interest at the legal rate from the date of the filing of this action.

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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5. For such other and further relief as the Court deems proper.

Dated: 01/29/2020 MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore
Tanya E. Moore
Attorney for Plaintiff
Hendrik Block

VERIFICATION

I, HENDRIK BLOCK, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 01/29/2020

/s/ Hendrik Block

Hendrik Block

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore, Attorney for
Plaintiff, Hendrik Block